

ATTCH K -- MOA BETWEEN  
EPA AND THE STATE

10.9.4.2-1012  
5/10/94

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Memorandum of Agreement  
between  
United States Environmental Protection Agency  
and the  
Idaho Department of Health and Welfare  
Division of Environmental Quality  
for the  
Consent Decree for Area I of the  
Bunker Hill Superfund Site

Goal

The Idaho Department of Health and Welfare, Division of Environmental Quality ("State") and the United States Environmental Protection Agency ("EPA") seek to coordinate resources to oversee the implementation of Remedial Actions at the Bunker Hill Superfund Site. Coordination of oversight activities and enforcement actions taken in accordance with the Bunker Hill Consent Decree ("CD") with Hecla, ASARCO, Sunshine Coeur d'Alene Mines and Callahan Mining Company will facilitate the successful completion of certain activities specified in the Records of Decision ("RODs") for the Bunker Hill Site.

This Memorandum of Agreement ("MOA") recognizes the following:

1. The benefit of the State's knowledge, expertise, and extensive involvement in the Bunker Hill Site, as well as the availability of on-site field oversight staff located at the Project Office in Kellogg, Idaho. Additionally, the State has contractor support available to further assist in oversight activities.
2. A combination of EPA and State resources will provide the most effective and efficient remediation of the areas outlined in the CD.

Purpose:

This MOA seeks to delineate the general areas of responsibility of the EPA and the State in connection with implementation of remedial actions in the designated areas of the Bunker Hill Site, and to describe the procedures that will be followed in overseeing Work conducted by Settling Defendants at the Site.

## Agreements:

This MOA recognizes that the State will play a major role in oversight of remedial actions in the areas of the Site that are encompassed in a Consent Decree with a group of Settling Defendants for the Bunker Hill Site. While the State and EPA will both have responsibilities for document review and oversight of field activities, it is the agencies expectation that the State will have primary day-to-day responsibilities for these activities. Recognizing that EPA has the authority to assess stipulated penalties against the Settling Defendants under the terms of the Consent Decree, EPA will work closely with the State to ensure that the activities of the agencies are well coordinated.

1. State Opportunity for Review and Comment: The Consent Decree provides the State with the opportunity for review and comment in a number of instances. The agencies expect that the State's review and comment will provide the basis for most of the agencies decisions under this Consent Decree and therefore is a significant responsibility which the State accepts and EPA respects. The agencies agree that any disagreements arising from the State's role in reviewing and commenting will be referred to the formal dispute resolution procedure provided by Paragraph 6.

2. Deliverable Review/Comment: Unless otherwise agreed, agency comments regarding Consent Decree deliverables will be developed by the State, with EPA input. EPA will make every effort to transmit comments to the State on each deliverable seven (7) days prior to the date a response is due to Settling Defendants. A standard transmittal form, documenting EPA concurrence with the State's compiled comments will be developed to expedite transmittal of comment letters to Settling Defendants. Formal transmittal of the comments to the Settling Defendants will be performed by EPA or by the State at EPA's request. While EPA retains the responsibility for approving all deliverables required by the Consent Decree, any disagreements regarding approval or disapproval of deliverables will be referred to the formal dispute resolution procedure provided by Paragraph 6.

In general, EPA and the State Project Coordinators or designees will work to develop responses to Settling Defendants' deliverables which reflect the view of both agencies. When the EPA and State Project Coordinators or their designees are unable to resolve disagreements following discussion of the disputed issues with their respective supervisors, the matter will be referred to the formal dispute resolution procedure provided by Paragraph 6.

3. Field Oversight: While both EPA and the State have responsibilities for oversight of field activities, the State is expected to provide primary day-to-day oversight because of the availability of the on-site State staff in the Kellogg Superfund Project Office. EPA and the State agree that their respective Project Coordinators or designees have authority to make field decisions on behalf of their respective agencies. The State shall keep EPA updated on field activities and will notify EPA immediately of any significant changes in these activities. In the event there is a disagreement between EPA and the State, such dispute shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

In the event that there is a release or threat of release which constitutes an emergency situation under Paragraph 53 of the Consent Decree, EPA and the State shall coordinate any necessary consultations with the Settling Defendants regarding appropriate response actions to prevent, abate or minimize such release. In the event there is a disagreement between EPA and the State, such dispute shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

Prior to halting work in accordance with Paragraph 46 of the Consent Decree, the State Project Coordinator or designee will, if possible, consult with the EPA Project Coordinator or designee. Immediately upon halting work, the State Project Coordinator or designee will notify the EPA Project Coordinator or designee. The agencies will coordinate to resolve the problem. In the event there is a disagreement between EPA and the State, such dispute shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

4. Stipulated Penalties: Upon identification of a concern during the course of remedial action implementation, either agency shall document the concern and may informally request that the Settling Defendants take appropriate action(s). Should efforts at informal resolution fail, the Project Coordinators or designee shall determine if a Notification of Violation ("NOV") should be issued to the Settling Defendants. It will be the responsibility of the agency field staff to promptly bring issues to the attention of the EPA and the State Project Coordinators or designees and to clearly document identified problems. EPA/State consultation on such matters will be conducted within one (1) working day of the time the matter is brought to the attention of the State and EPA Project Coordinators or designees.

If EPA and the State Project Coordinators or designees, agree that a NOV should be issued, EPA will promptly issue the NOV. If EPA and the State agree that issuance of an NOV is inappropriate, the Project Coordinator or designees, may send a letter to the Settling Defendants noting the problem identified

and explaining the Agency position on the issue. In the event there is a disagreement between EPA and the State, such dispute shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

EPA will consult with the State prior to issuing a written demand for payment of Stipulated Penalties. EPA is responsible for assessing Stipulated Penalties under the terms of the Consent Decree.

5. Institutional Controls Program: Disagreements between the EPA and State representatives on the Institutional Controls Oversight Committee established by Attachment D to the Consent Decree shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

6. Resolution of Disputes: Disagreements between the State and EPA on matters covered by this MOA shall be immediately elevated to the next level of management. If these managers are not able to resolve the disagreement, the issue will be referred to the State Remediation Bureau Chief, and the EPA Superfund Remedial Branch Chief, for joint consultation and resolution. In the event that a joint resolution is not reached at this level of management, the Director of the Hazardous Waste Division, after consultation (if requested and available) with the Division of Environmental Quality Administrator will make a final decision regarding the disputed matter. The Director of the Hazardous Waste Division will make reasonable efforts to resolve the matter within twenty (20) days. Any decision of the Hazardous Waste Division Director relating to matters covered by this MOA shall be the final resolution of the dispute. Such decision is not subject to judicial review. Upon request by the State, the Director of the Hazardous Waste Division will document the basis for the decision.

7. Reservations. Nothing in this MOA shall be deemed to limit any authority of the United States, or the State, to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

8. Modification and Termination. EPA and the State may modify this MOA upon mutual agreement of EPA and the State. EPA or the State may terminate the MOA upon written thirty (30) days notification to the other party.

5/3/94  
Date

*Randall F. Smith*  
U. S. Environmental Protection Agency  
Region 10

Date \_\_\_\_\_

State of Idaho  
Idaho Department of Health and Welfare  
Division of Environmental Quality

9. Effective Date. The MOA shall become effective upon signing by EPA Region 10 and the State of Idaho.

Date

5/4/94

Date

U. S. Environmental Protection Agency  
Region 10

JOE NAGEL

State of Idaho

Idaho Department of Health and Welfare  
Division of Environmental Quality